



Montana Department of
ENVIRONMENTAL QUALITY

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Judy H. Martz, Governor

P.O. Box 200901 • Helena, MT 59620-0901 • (406) 444-2544 • www.deq.state.mt.us

July 7, 2003

Dan Thede, Supervisor of City Services
City of Libby
PO Box 1428
Libby, MT 59923

CERTIFIED MAIL #7000 0600 0021 9345 069
Return Receipt Requested

EPA
SUPERFUND BRANCH

2003 JUL - 9 PM 1:49

RE: Violations of the Water Quality Act [CVID# 7273]

Dear Mr. Thede:

On June 3, 2003, Ed Coleman from the Enforcement Division of the Montana Department of Environmental Quality (Department) conducted a field investigation in regards to a complaint about possible violations of the Montana Water Quality Act (WQA). The complainant alleged that, during the process of installing a boat ramp to access the Kootenai River, the City of Libby (City) placed sediment into the river that contained high concentrations of vermiculite. The field investigation confirmed that, in several locations, sediment, which contained vermiculite, had been placed in the river and in direct proximity of the river with minimal Best Management Practices (BMPs) in place to control erosion. The placement of the soils in and along the river is considered a placement of wastes where they have caused or will cause pollution to state waters, which is a violation of the WQA.

Section 75-5-605(1)(a), Montana Code Annotated (MCA), of the WQA states: "It is unlawful to cause pollution as defined in Section 75-5-103, MCA, of any state waters or to place or cause to be placed any wastes where they will cause pollution of any state waters." Pursuant to 75-5-103(19), MCA, sediment is defined as a waste. Section 75-5-103(29)(a), MCA, defines "state waters" as a body of water, irrigation system, or drainage system, either surface or underground.

While on site, Mr. Coleman also observed that several cobble-sized chunks of asphalt were incorporated into the fill material west of the boat ramp. Burying asphalt is considered a violation of the Solid Waste Management Act (SWMA). Section 75-10-221, MCA, of the SWMA states that, "... no person may dispose of solid waste or operate a solid waste management system without a license from the department." Because this site is not a licensed landfill facility, the disposal of the asphalt on City property constitutes a violation of the SWMA. The only material that can be buried without a license is clean fill, which is defined as soil, dirt, sand, gravel, rocks and rebar-free concrete, as per Administrative Rules of Montana (ARM), Title 17, chapter 50, subchapter 5.

During our phone conversation on July 2, 2003, you stated the City had purchased jute netting and riprap that was planned for installation along the riverbank to stabilize the fill. However, the Environmental Protection Agency (EPA) required the City to stop work on the project because of concerns about the vermiculite. Therefore, the City was unable complete the project and install these BMPs as planned. Also, shortly after the work was stopped, water levels in the river increased, resulting

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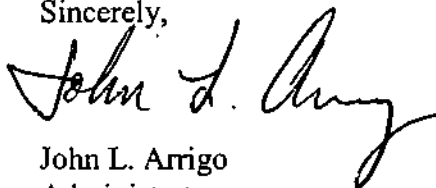
in unanticipated erosion. I spoke with Jim Christianson, EPA, and he indicated that EPA would remove the vermiculite-containing fill and reclaim the riverbank. However this work may not be completed for 30-45 days. Because of this delay, Ed Coleman and I discussed BMPs with Mr. Christianson that should be implemented during the interim.

If the EPA does not remediate the site, the City is ultimately responsible for returning the site to compliance with the WQA and the SWMA. The following work must be completed to return to compliance:

- Install and maintain Best Management Practices BMPs such as a silt fence and/or erosion control fabric in the disturbed areas along the river to prevent sediment and sediment-laden water from discharging into the river.
- Seed the areas of disturbance to stabilize the site and prevent sediment from entering into state waters. Please contact the Natural Resources Conservation Service (NRCS) in Eureka at 296-2233 to determine the proper seed mixture.
- Wastes, such as the asphalt, that does not meet the definition of clean fill in the fill material west of the boat ramp must be removed and disposed of either at a licensed landfill or recycling facility.

Please be advised that failure to come into compliance with the WQA and the SWMA may result in formal enforcement. This notice letter fulfills the requirement of Section 75-5-617(2), MCA, and does not create a right of appeal pursuant to Section 75-5-611(4). After EPA completes the work, I would appreciate it if you could send me a brief letter to document that the site has been returned to compliance. After receipt of the letter, the complaint file will be closed. If you have any comments or questions, feel free to contact me at the telephone number listed below.

Sincerely,



John L. Arrigo
Administrator
Enforcement Division
(406) 444-5327; fax (406) 444-1923
e-mail: jarrigo@state.mt.us

cc: Mayor Tony Berget, P.O. Box 1428, Libby, MT 59923
Lincoln County Sanitarian, 418 Mineral Ave., Libby, MT 59923
NRCS, 655 U.S. Hwy. 93 North, Eureka, MT 59917
Craig French, DEQ Remediation Division
Jim Christensen (EPR-SR), US EPA Region 8, 999 18th St., Suite 300, Denver, CO 80202-2466
Mike Hesler, FWP, 475 Fish Hatchery Rd., Libby, MT 59923
Complainant